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Service Animals in the Employment Context

In light of reported plans by the Equal Employment Opportunity Commission (EEOC) to develop guidance concerning treatment of service animals in the workplace, the Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force offers the following position and recommendations. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Employment and Training Task Force concerns itself with those issues affecting the ability of people with disabilities to achieve economic self-sufficiency through participation in the labor force. Title I of the ADA prohibits disability discrimination in the employment and requires employers to provide reasonable accommodations to applicants and employees.¹

While the Equal Employment Opportunity Commission (EEOC), which is charged with interpreting the employment provisions of the ADA (Title I), does not have a specific regulation concerning service animals, the agency has long recognized permission to use a service animal in the workplace as a type of reasonable accommodation. It has also recognized emotional support animals as a type of reasonable accommodation, and has a pending case against a trucking company involving a failure to accommodate a driver's request to have an emotional support dog to accommodate post-traumatic stress and mood disorders.² *EEOC v. CRST International, Inc.*, No. 1:17-cv-00129-LRR (filed 11/1/17 in N.D. Iowa, transferred following initial filing 3/2/17 in M.D. Fla.).

As with any other accommodation, employers must engage in the "interactive process" to determine whether an employee's or applicant's request for use of a service animal or emotional support animal is reasonable or if it constitutes an undue hardship.³ If the person's disability is not obvious and/or the reason the animal is needed is not clear, an employer may request

¹ . 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. § 1630.9(a).

² Although the Justice Department defined "service animals" narrowly for purposes of Titles II and III of the ADA as a dog or miniature horse trained to do work or perform tasks for people with disabilities, that narrow definition reflects the wide range of settings covered by those titles and the Department recognizes that broader rights may apply in other settings. 28 C.F.R. Part 36, Appx A, § 36.104.

³ 29 C.F.R. § 1630.2(o)(3).

documentation to establish the existence of a disability and how the animal helps the individual perform his or her job.⁴ Service and emotional support animals may be excluded from the workplace if they pose either an undue hardship or a direct threat in the workplace.⁵ The EEOC has consistently followed its longstanding interpretation of “direct threat,” defining it as “a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation” and explaining that the determination “shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. . . . based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence.”⁶ Following the EEOC’s regulations, courts have long considered four factors in determining whether a direct threat exists:

- (1) The duration of the risk;
- (2) The nature and severity of the potential harm;
- (3) The likelihood that the potential harm will occur; and
- (4) The imminence of the potential harm.⁷

Courts have applied these standards without difficulty for more than two decades.

It is essential that the ADA’s protections apply on an individualized basis, considering the facts and circumstances of each situation. As the EEOC has recognized, “[w]hether a particular form of assistance would be required as a reasonable accommodation must be determined on an individualized, case by case basis”⁸ Bright-line rules concerning how the ADA’s protections apply are inconsistent with the law’s intent, and can create unintended consequences when applied in unanticipated situations.

We urge that, if the EEOC develops guidance with respect to behaviors that may render a service or support animal a direct threat, it avoid setting forth bright-line rules rather than simply offering representative examples illustrating principles in its regulations. It is critical that the agency avoid creating a set of “behavior standards” for service and support animals; such an effort is likely to result in unanticipated applications that inappropriately restrict work opportunities for people with disabilities.

⁴ *Id.* Part 1630, Appx. § 1630.9 (“When the need for an accommodation is not obvious, an employer, before providing a reasonable accommodation, may require that the individual with a disability provide documentation of the need for accommodation.”).

⁵ 42 U.S.C. §12112(b)(5)(A), 29 C.F.R. §§ 1630.9(a), 1630.15(b)(2).

⁶ 29 C.F.R. § 1630.2.

⁷ *Id.*

⁸ *Id.* Part 1630, Appx., § 1630.9.